



UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. The Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”), contests her reassignment to a new post and the “limitation of contract extension to seven months following reassignment of post, constituting constructive dismissal”.

2. The Applicant submits that the limitation of her contract extension to seven months resulted in her separation from service as of 31 July 2011. She submits that this decision amounts to a constructive dismissal and that the contested decision

unfairly prejudices her legitimate expectation of continued employment, violates the terms of her non-reimbursable loan and the corresponding lien on the post formerly occupied by her, and is improperly influenced by retaliatory motives for having complained about unfair treatment and improper actions by her immediate supervisor.

3. The Applicant seeks, *inter alia*, a two-year fixed-term appointment and compensation for moral damages.

4. The Respondent submits, *inter alia*, that the contested decision did not directly impact the Applicant’s rights and thus is not receivable under art. 2.1(a) of the Tribunal’s Statute. The Respondent submits that the Applicant does not have a right to renewal of her contract for two years at a time and that it was within UNICEF’s discretion to offer her a seven-month extension, which she accepted. The Respondent further submits that the present case concerns only the limited extension of the Applicant’s contract, not her separation on 31 July 2011. With respect to the merits of the Applicant’s claims, the Respondent submits that the issue in this case is not about non-renewal of a contract, but about the duration of such contract, which determination can be made only by the Administration.

Procedural matters

5. By Order No. 179 (NY/2013), dated 5 September 2012, the Tribunal proposed that it would first deal with the issue of receivability of the present application. The parties were directed to file submissions on receivability and to inform the Tribunal if they objected to the issue of receivability being decided on the papers. The parties' submissions were duly filed, with neither party objecting to the issue of receivability being decided on the papers.

Background

6. The Applicant joined UNICEF in 1987 as a National Officer ("NO"). In 1992, she was promoted to NO level 3. She was 55 years old at the time of her separation in July 2011, and had served with the United Nations for some 24 years and six months. Up until 2008, her performance fully met and exceeded expectations.

7. In January 2008, the Applicant was promoted and appointed as Child Development Specialist at the NO level 4 against post no. 51964 in the Child Development and Nutrition ("CDN") Section of the UNICEF India Country Office.

8. The Applicant submits that following the appointment of a new Chief of Section at the end of November 2007, she experienced an increasingly hostile working environment, caused by a strained relationship with her new supervisor.

9. In 2008 and 2009, the Applicant's supervisor rated her performance as wanting with respect to several competencies.

10. The Applicant strongly disagreed with the ratings given to her in 2008 and 2009, and included comments to this effect in the performance evaluation reports. The Respondent submits, however, that the Applicant never formally contested her

16. The Applicant submits that she was removed from the 2011–2012 Office organigram and, in mid-August 2010, her name was deleted from the list of email distributees for UNICEF announcements. She submits that her name was only restored to the mailing list on 26 October 2010 after reminders by her to that effect. She states that she therefore did not receive the internal vacancy notices mailed to all staff during the prior two months, including the one for her own post.

17. Interviews for post no. 51964 were held on 8 November 2010, while the post was still encumbered by the Applicant.

18. On 10 November 2010, the Applicant received an email from HRS enclosing a letter dated 8 November 2010 from the Representative, UNICEF India Country Office, advising her that she was being reassigned with effect from 8 November 2010 to a new post (no. 68409) in the Office of the Deputy Representative Programmes with a new job description and that her fixed-term appointment would be extended for seven months, i.e., until 31 July 2011, and would thus expire without prior notice on that date. The letter stated:

I am delighted to inform you that you are re-assigned to the post of Child Development Specialist, NO-D. Post No. 68409 under the Office of the Deputy Representative, Programmes, with effect of 8 November 2010 and (copy of the Job Description is hereto attached).

Your contract will be extended until 31 July 2011 and it expires without prior notice on this date. As you know, a Fixed-Term appointment, irrespective of the length of service, does not carry any expectancy, legal or otherwise, or renewal or conversion to any other type of appointment with UNICEF. A Personnel Action and Letter of Appointment will be raised to reflect your move from CDN Section to the Front Office as well as the extension of your contract, and a copy will be sent to you by the HR Section.

19. However, the Applicant continued to report for work at the Planning Commission, Government of India, until 6 January 2011 without having received

the aforesaid contract. The Applicant states that a personnel action form and a letter of appointment, dated 14 and 15 December 2010, respectively, noting extension of appointment and a change of post were forwarded by HRS on 4 January 2011 and

24. By letter dated 24 February 2011, the Deputy Executive Director of UNICEF replied to the Applicant's request for management evaluation, stating that he saw no reason to rescind the contested decision. The letter stated, *inter alia*:

Accordingly, once the expiration date is reached, no further administrative decision is required for the separation from service to be effective. Therefore, at that time, in spite of the length of service with the Organization, there is no obligation to offer a staff member on a fixed term appointment an extension of his or her contract.

25. On 17 May 2011, the Applicant filed the present application with the Tribunal.

Consideration

26. Article 2.1(a) of the Dispute Tribunal's Statute states that the Tribunal is competent to hear and pass judgment on an application against the Secretary-General appealing "an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment".

27. The Applicant is a former staff member of UNICEF. She submits that her reassignment and the limited extension of her appointment, with resultant separation at the end of the extension period, amounted to constructive dismissal and was contrary to her "legitimate expectati

Conclusion

32. In all the circumstances, the Tribunal finds that this application is receivable.

33. By Wednesday, 11 December 2013, the parties are ordered to file a joint submission stating whether they agree to attempt resolving this case informally. If the parties are unable to reach an agreement, they will be ordered to file further submissions.

(Signed)

Judge Ebrahim-Carstens

Dated this 27th day of November 2013

Entered in the Register on this 27th day of November 2013

(Signed)

Hafida Lahiouel, Registrar, New York